UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,547	01/28/2002	Yakov Kamen	007287.00029	5977

22907   7590   05/26/2009
BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER
NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
2421	

MAIL DATE	DELIVERY MODE
05/26/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _02 April 2009_.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-27 and 30-40_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) _13-16,18,22-24,33,37 and 38_ is/are allowed.

6)☒ Claim(s) _1-12,32,35 and 36_ is/are rejected.

7)☒ Claim(s) _17,19-21,25-27,30,31,34,39 and 40_ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _28 January 2002_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on April 2, 2009 has been entered.

2.   Claims 1-27 and 30-40 are pending. Claims 1, 13 and 25 are independent claims.

Response to Amendment

3.   Per Applicant's request, Claims 1, 3-5, 13, 15-17, 25, 32-33 have been amended and new

claims 35-40 have been added.

Response to Arguments

4.   Applicant's arguments have been fully considered and they are persuasive. The rejection

of Claims 1-27 and 30-34 is withdrawn.

Claim Objections

5.   Claims 1, 7-9, 17, 19-21 and 25 are objected to because of the following minor

informalities.

Claim 1

        The conjunctive "and" at the end of the claim should be deleted.

Claim 7

        The limitation "the associated one or more structure attributes" appears to lack

proper antecedent basis.

Claim 8

        The limitation "the associated one or more information attributes" appears to lack

proper antecedent basis.

Claim 9

The limitations "the associated one or more structure attributes" and "the associated one or more information attributes" appear to lack proper antecedent basis.

Claim 17

The preposition "of" after "wherein when the first number" at line 1 should be deleted.

Claim 19

The limitation "the associated one or more structure attributes" appears to lack proper antecedent basis.

Claim 20

The limitation "the associated one or more information attributes" appears to lack proper antecedent basis.

Claim 21

The limitations "the associated one or more structure attributes" and "the associated one or more information attributes" appear to lack proper antecedent basis.

Claim 25

Claim 25 is objected to because the claim fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention and as a result appears to omit essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP §2172.01. The omitted structural cooperative relationships are:

Claim 25 recites *a first queue to store active data elements* and *a second queue to store inactive data elements* and then *a first number of available block instances is compared to a second number of available data elements to determine whether the first number is greater than the second number*. It is unclear as to whether the first queue to store active data elements is the related to the first number of available block instances and as to whether the second number is related to the second number of available data elements and if they are not related then there should be an essential structural cooperative relationship between the queue of active data elements and the available block instances and the second queue of inactive data elements and the second available data elements.

For compact prosecution purposes, the first queue of active data elements is interpreted to be the same as the available block instances and the second queue of inactive data elements the same as the available data elements.

Double Patenting

6.   The non-statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper time wise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ 2d 2010 (Fed. Cir. 1993); In re Long, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1993); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Voge, 422 F2.d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F2.d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.103(c) 1.321(c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.37(b).

7.   Claims 25 and 1 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 and 4, respectively, of U.S. Patent No. 7,106,338.

Instant Claim 25	Patent Claim 1	Comments
A system including:	A system comprising:	
a memory coupled with the processor, the memory	first preferred memory of a given size and a second memory;	The instant claimed memory can be divided in two sub-memories as

operable to include a first queue to store active data elements and a second queue to store inactive data		recited in the patent claim, one of which containing the first queue and the other the second queue.
	a data filter coupled to a text-to-image converter for converting filtered data into image data using texture maps;	
a processor	and a processor	
wherein a first number of available block instances is compared with a second number of available data elements to determine whether the first number is greater than the second number, wherein in response to determining that the first number is greater than the second number, one of at least the three display technique is chosen, wherein the active data elements are displayed in visible block instances in an interactive three-dimensional programming guide (IPG), and	coupled to the data filter, wherein the processor executes a first logic in which the total size of the set of texture maps is less than or equal to the first memory size; and	The instant claimed first number of available block instances (interpreted to be the queue to store inactive data elements) is equated with the patent claimed first memory size and the second number of available data elements (interpreted to be the queue of active data) is equated with the patent claimed total size of the set of texture maps; The instant claimed one of at least the three display techniques is equated with the instance when the total size of the texture map is less than or equal to the available first memory size recited in the limitation "a second logic ... if the total size of the texture map is less than or equal to the available first memory size ..." of the patent claim.

| | a second logic if the total size of the set of texture maps is greater than the first memory size, to divide the set of texture maps into two groups and a memory analyzer for analyzing set-top box layout to determine the types and corresponding sizes of at least the first and the second memories available in the set-top box, the memory analyzer being coupled to a memory distributor, wherein the system determines a storage size necessary for storing the texture maps defining one or more images and the memory distributor distributes the texture maps to a preferred first memory if the total size of the texture maps is less than or equal to the available first memory size and further wherein if the total size of the texture maps is greater than the first memory size, the texture maps are divided into two groups where a first group's total size is the largest possible sum of map sizes less than the first memory size and where a second group's total size is the difference between the total size of the set of texture maps and the total size of the first group, wherein the set of texture maps of the first group is stored in the first memory, wherein the set of texture maps of the second group | |
| *wherein the visible block instances are displayed contiguously in accordance with the chosen display technique.* | is stored in the second memory, and wherein the set of texture maps of the second group is compressed to fit into the first memory if sufficient second memory is not available to receive the set of texture maps of the second group. | In any of the three scenarios, the texture maps are to be displayed contiguously in order for the logic to know when the total size of texture maps can fit into the available first memory block or when the total is greater than the size of the first memory block to know where to partition |

		the size of the texture map in two groups and display.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of the invention recited in instant Claim 25 appears to be anticipated by that recited in patent Claim 1.

The same rationale is also applicable for the rejection of instant Claim 1 as being obvious variants of patent Claim 4.

Claim Rejections - 35 USC § 101

8.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9.   Claim 1 is rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method including steps of determining a first number of block instances, determining a second number of available information attribute sets, determining whether the first number is greater than the second number, choosing a first mapping technique of at least three techniques, mapping the available information attribute sets to the available block instances and displaying the mapped block instances contiguously is broad enough that the claim could be completely performed mentally, verbally or without a machine nor is any transformation apparent. First, the block instances, information attribute sets can be

represented by pieces of paper, and the determining, matching and displaying of which can be performed manually by a human being. Second, there seems to be no transformation of any data to another form.

Claims 2-12, 32 and 35-36, which depend from Claim 1, are also rejected under 35 U.S.C. 101 because none of the claims appears to tie the process to a particular machine.

Allowable Subject Matter

10.   Claim 1 is rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter, but would be allowable if rewritten to direct the claim to statutory subject matter.

11.   Claims 2-12, 32 and 35-36 are objected to as being dependent upon a rejected base claim, but would be allowable if base Claim 1 is rewritten to direct the claim to statutory subject matter.

12.   Claims 13-16, 18, 22-24, 33 and 37-38 are allowed.

13.   Claims 7-9, 17 and 19-21 are objected to as containing informalities, but would be allowable if rewritten to correct the identified informalities.

14.   Claim 25 is objected to as being lacking essential structural cooperative relationship between claimed elements, but would be allowable if rewritten to correct the identified deficiency.

15.   Claims 26-27, 30-31, 34 and 39-40, which depend from Claim 25, are objected to, but would be allowable if claim 25 is rewritten to correct the identified deficiency.

16.   The prior art of record and the new prior art reference made of record (i.e., U.S. Patent No. 6,986,154 to Price et al. ("Price")), taken individually or in combination, fail to teach or suggest all the limitations recited in Claim 1, 13 and 25, when these limitations are taken in combination.

Conclusion

17.   The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

18.   Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hoang-Vu A. Nguyen-Ba whose telephone number is (571) 272-3701. The Examiner can normally be reached on Monday -Friday from 9:00 – 17:30.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, John Miller can be reached at (571) 272-7353.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2400 Group receptionist: 571-272-2400.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hoang-Vu Antony Nguyen-Ba/
Primary Examiner, Art Unit 2421
May 20, 2009